

¹ 5 U.S.C. § 8101 *et seq.*

pursuant to 5 U.S.C. § 8106(c)(2); and (3) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On June 4, 2008 appellant then a 38-year-old window clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 23, 2008 she bruised her right leg, head, neck, and tailbone when she tripped on a stool and fell while in the performance of duty. OWCP accepted her claim for contusions of multiple sites, not elsewhere classified and subsequently expanded the acceptance of her claim to include sprain of the back, thoracic region, contusion of buttock, displacement of lumbar intervertebral disc without myelopathy, intervertebral disc disorder with myelopathy, cervical region, and displacement of cervical intervertebral disc without myelopathy. Appellant stopped work on May 24, 2008 and worked intermittently thereafter until stopping work completely on May 3, 2017. OWCP paid appellant wage-loss compensation on the supplemental rolls and then on the periodic rolls.

OWCP referred appellant, along with the case record and a statement of accepted facts (SOAF), for a second opinion examination to determine her disability status. In an August 3, 2017 report, Dr. Albert Sanders, a Board-certified orthopedic surgeon, opined that appellant continued to have residuals of the work-related injury of May 23, 2008. He noted that appellant was status post cervical fusion at C5-6 and lumbar fusion at L5-S1, but continued to have chronic pain in the neck and low back. Dr. Sanders advised that appellant exhausted all treatment modalities and her prognosis was poor. He opined that appellant reached maximum medical improvement (MMI) on September 17, 2015. Dr. Sanders indicated that appellant underwent a functional capacity evaluation (FCE) on August 11, 2017 that found that she was capable of performing sedentary duty, but not the usual duties of a window clerk. He reviewed the job description for a modified passport scheduler that did not require lifting/pulling/pushing over 10 pounds and occasional standing and walking and opined that appellant could perform these duties without restrictions. In a work capacity evaluation (Form OWCP-5c) dated August 11, 2017, Dr. Sanders noted diagnoses and indicated that appellant reached MMI and could return to work without restrictions.

By letter dated October 25, 2017, the employing establishment offered appellant a position as a modified clerk. The duties included: sitting to perform customer complaint cases for two hours a day; sitting to process parcel returns on a laptop for two hours a day; processing passports while sitting for two hours a day; and assisting customers at the window while standing for two hours a day. The physical requirements included: lifting, pushing, and pulling no more than 10 pounds; standing and walking for no more than two hours each; reaching above the shoulder for no more than two hours a day; and no twisting.

On November 3, 2017 the employing establishment indicated that appellant did not show up for work and did not respond to the job offer. On February 21, 2018 the employing establishment confirmed that the job remained available.

By notice dated February 23, 2018, OWCP advised appellant that it had determined that she had refused or failed to report to the offered position as a modified clerk. It informed her that it had reviewed the offered position and found it was suitable and in accordance with the medical restrictions provided by Dr. Sanders' August 3, 2017 report. Pursuant to 5 U.S.C. § 8106(c)(2),

OWCP afforded appellant 30 days to accept the position or to provide adequate reasons for refusal. It informed her that an employee who refuses an offer of suitable work without cause is not entitled to wage-loss or schedule award compensation.

In a letter dated March 8, 2018, appellant rejected the job offer, asserting that the job exceeded her restrictions and that she was in severe incapacitating pain.

Appellant submitted a March 9, 2018 report from Dr. Kenneth Lee, a Board-certified orthopedist, who noted a history of injury and diagnosed cervicalgia, low back pain, post-laminectomy syndrome, radiculopathy in the lumbar and cervical region, obesity, intervertebral disc displacement of the lumbar region, and spinal stenosis of the lumbar region with neurogenic claudication. Dr. Lee reviewed a post-lumbar computerized tomography myelogram (CTM) from October 10, 2017, which revealed most prominently L3-4 four-millimeter disc bulge with moderate central canal stenosis with effacement about traversing nerve roots producing severe central canal and lateral recess stenosis. He indicated that appellant remained symptomatic with low back pain and bilateral lower extremity pain and recommended surgical intervention lumbar decompression and discectomy at L3-4. Dr. Lee further indicated that appellant could not return to work even in a sedentary capacity due to severe central canal stenosis associated with radiculopathy affecting her lower extremities.

On March 22, 2018 OWCP reviewed the evidence of record and determined that the modified clerk position was not suitable. It determined that Dr. Lee's March 9, 2018 report revealed that appellant's condition may have materially worsened and she may require surgery and, therefore, could not work.

OWCP requested an addendum report from Dr. Sanders addressing Dr. Lee's report and providing an opinion on whether the proposed treatment was due to the accepted conditions. On April 2, 2018 Dr. Sanders noted that he could not comment as he had not received a copy of the cervical CTM or Dr. Lee's report and his evaluation was performed eight months ago and appellant's current condition was not clear.

On May 4, 2018 OWCP referred appellant to Dr. Sanders for a supplemental second opinion. In a May 24, 2018 report, Dr. Sanders opined that appellant continued to have residuals of the work-related injury. He found that the most recent CTM of the lumbar spine dated October 9, 2017 revealed prominent spinal stenosis at L3-4, and opined that these residuals were due to the work-related injury. Dr. Sanders disagreed with Dr. Lee's opinion that appellant should remain off work and indicated that the prior FCE showed that appellant was capable of performing sedentary work with restrictions. In a Form OWCP-5c dated June 1, 2018, he noted that appellant could return to sedentary work with permanent restrictions of walking, standing, and reaching above shoulders no more than two hours a day, pushing, pulling, and lifting up to 10 pounds for no more than two hours, and no twisting, bending, squatting, kneeling, climbing or stooping.

On December 31, 2018 OWCP determined that there was a conflict of medical opinion between Dr. Lee, appellant's treating physician who opined that appellant was totally disabled from work, and Dr. Sanders, the second opinion physician, who opined that appellant was capable of working in a full-time limited-duty capacity.

OWCP referred appellant to Dr. Gwenevere Williams, a Board-certified physiatrist, for an impartial medical evaluation. In her January 31, 2019 report, Dr. Williams noted reviewing the SOAF, medical history, and the medical record, including appellant's prior medical diagnosis and procedures. Findings on examination revealed: a well-healed spinal incision; flattening of cervical and lumbar lordosis; restricted range of motion in the lumbar and cervical spine; tenderness to bilateral cervical paraspinals, splenius capitus, trapezii, infraspinatus, and rhomboid; moderate tenderness to the right acetabulum and upper gluteals; and vague sensory dysesthesia to light touch and pinprick to the left L5 and S1 dermatomes. Dr. Williams reported that appellant was obese and concomitant of significant deconditioned state unrelated to the May 23, 2008 work injury. She noted that the work-related injury was affected by the preexisting medical condition of obesity that placed excessive load on the cervical and lumbar spine causing additional symptomology. Dr. Williams related that appellant provided inconsistent effort during her February 1, 2019 FCE. However, based upon results documented by the FCE, Dr. Williams opined that appellant was capable of performing modified sedentary work on a full-time basis. In a Form OWCP-5, Dr. Williams opined that appellant was capable of walking and standing up to two hours per day, reaching above her shoulder up to two hours per day, pushing, pulling no more than 20 pounds up to two hours per day, lifting no more than 10 pounds up to two hours per day, and no twisting, bending or stooping.

Appellant was treated in follow up by Dr. Andrew McKay, a Board-certified anesthesiologist, on February 26 and June 18, 2019 for neck and low back pain. Dr. McKay noted findings of diminished range of motion of the cervical and lumbar areas of the spine, positive Spurling's test, tenderness to palpation at C3-4 to C5-6 levels, weak upper and lower extremity motor strength, and positive straight leg testing bilaterally. He diagnosed failed cervical and lumbar spine surgery syndrome, status post lumbar and anterior cervical fusions, cervicalgia, lumbago, chronic pain syndrome, and morbid obesity.

On July 19, 2019 the employing establishment offered appellant a modified distribution window and markup clerk position. The salary for the position was the same as appellant's current PS 06/0 salary of \$60,737.00. The job description listed that duties would be performed up to eight hours a day and included assisting customers in the lobby that could be performed while sitting up to eight hours. The physical requirements included: lifting up to 10 pounds; pushing and pulling up to 20 pounds intermittently up to two hours each; walking, standing, and reaching above the shoulder intermittently up to two hours each; and no twisting, bending, or stooping. The available shift was from 9:00 a.m. to 6:30 p.m., Monday through Friday, with Sundays and Wednesdays off.

In a letter dated August 19, 2019, OWCP advised appellant that the position offered was suitable in accordance with the medical limitations provided by Dr. Williams on February 18, 2019. It notified her that, if she failed to report to work or failed to demonstrate that the failure was justified, pursuant to 5 U.S.C § 8106(c)(2), her wage-loss compensation and entitlement to a schedule award would be terminated. OWCP afforded appellant 30 days to respond.

On September 17, 2019 appellant responded to the August 19, 2019 letter, asserting that she was medically unable to accept the offered position as the duties of the assignment were inconsistent with her medical restrictions and disabilities.

Appellant submitted an October 8, 2019 report from Dr. McKay, who noted findings on examination of tenderness of the cervical spinous process at C3-4 and C5-6, positive Spurling's test on the right, and diminished motor strength of the upper extremities diminished on the left. With regard to the lumbar spine he noted paraspinal muscle tenderness bilaterally, tenderness to palpation of L3-4 and L5-S1, and weak motor strength of the lower extremities. He diagnosed failed cervical and lumbar spine surgery; status post lumbar fusion and anterior cervical fusion; cervicgia, lumbago, chronic pain syndrome; and obesity. Dr. McKay noted that appellant was totally disabled.

On October 9, 2019 appellant was treated by Dr. Shahid Syed, a Board-certified internist, for low back and neck pain. Findings on examination revealed an obese female; tenderness to palpation of the cervical spine; paraspinal neck and trapezius; and decreased range of motion of the paralumbar, parathoracic, and buttocks. Dr. Syed noted a problem list of chronic back pain, cervical herniation, lumbar herniation, lumbar and cervical post-laminectomy syndrome, sprain of the ligaments of the cervical spine, muscle fascia and tendon at the neck, ligaments of the thoracic spine, and muscle spasm of the back. He noted that appellant was off work for three months.

In a December 20, 2019 letter, OWCP found that the reasons appellant provided for refusing the offered position were invalid. It afforded her 15 additional days to accept and report to this position. OWCP noted that if appellant did not accept the position within 15 days of the date of the letter, her wage-loss compensation and entitlement to a schedule award would be terminated pursuant to 5 U.S.C. § 8106(c)(2). No additional response was received.

By decision dated April 13, 2020, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award, effective April 26, 2020, finding that she had refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c)(2).

In a compensation termination worksheet dated June 3, 2020, OWCP indicated that appellant's compensation was terminated effective April 26, 2020; however, she continued to be paid on the periodic rolls from April 26 through May 23, 2020. The overpayment amount was \$3,193.12.²

On June 8, 2020 OWCP issued a preliminary overpayment determination that an overpayment of compensation had been created in the amount of \$3,193.12 as appellant continued to receive payment on the periodic rolls through May 23, 2020, after her FECA wage-loss compensation had been terminated on April 26, 2020. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, and canceled checks, pay slips, and any other records, which support income and expenses. Additionally, OWCP provided an overpayment action request form and further notified

² The record reveals that payment was issued on May 23, 2020 *via* electronic funds transfer for the period April 26 through May 23, 2020.

appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

On July 6, 2020 appellant completed a Form OWCP-20 and requested that OWCP render a decision based on the written evidence. She disagreed with the fact and amount of the overpayment, and requested waiver of recovery of the overpayment.

On a Form OWCP-20 completed on July 6, 2020 appellant reported that her total monthly income included \$123.00 from the Social Security Administration (SSA) and miscellaneous sales of \$180.00, resulting in total monthly income of \$303.00. She reported expenses totaling \$2,365.00. Appellant indicated monthly expenses of \$665.00 for rent, \$600.00 for food, \$100.00 for clothing, \$800.00 for utilities, and \$200.00 for other expenses. She reported: no cash on hand; a checking account balance of \$467.32; a savings account balance of zero; and no stocks, personal property or other assets. Appellant indicated that she had been experiencing more expenses than normal as her car had broken down and her home had flooded due to a broken washing machine. She indicated that she provided a written explanation as to why she could not accept the offered position on September 17, 2019. Appellant further asserted that she was entitled to compensation benefits because she could no longer work due to the accepted employment injuries. With regard to whether there was a change in circumstances affecting her monthly payment, she indicated that there was not.

On October 1, 2020 appellant attended a telephonic prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She subsequently submitted financial documentation including a monthly benefits statement from SSA noting a payment of \$1,783.00. Appellant noted: expenses of car insurance of \$132.00 a month; natural gas of \$20.00; water bill of \$69.49 a month; mortgage of \$662.00 a month; telephone service for two lines at \$71.83 and \$77.83 a month; and electric service of \$131.45 a month. She provided documentation from the Thrift Savings Plan (TSP) reflecting a balance of \$68,251.01, savings account balance of \$119.68, and checking account balance of \$16.39.

By decision dated November 10, 2020, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$3,193.12 for the period April 26 through May 23, 2020, because she continued to receive wage-loss compensation following the termination of her compensation. OWCP further found that she was without fault in the creation of the overpayment, but denied waiver of recovery because the evidence of record was insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. It required recovery by payment of \$100.00 per month.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's compensation benefits.³ Section 8106(c)(2) of FECA provides that a partially disabled employee who refuses or neglects to work after suitable

³ See *K.S.*, Docket No. 19-1650 (issued April 28, 2020); *J.R.*, Docket No. 19-0206 (issued August 14, 2019); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005).

work is offered to, procured by, or secured for the employee is not entitled to compensation.⁴ To justify termination of compensation, OWCP must show that the work offered was suitable, that the employee was informed of the consequences of refusal to accept such employment, and that he or she was allowed a reasonable period to accept or reject the position or submit evidence to provide reasons why the position is not suitable.⁵ Section 8106(c) will be narrowly construed as it serves as a penalty provision, which may bar an employee's entitlement to compensation based on a refusal to accept a suitable offer of employment.⁶

In determining what constitutes suitable work for a particular disabled employee, OWCP considers the employee's current physical limitations, whether the work was available within the employee's demonstrated commuting area, the employee's qualifications to perform such work, and other relevant factors.⁷ The issue of whether an employee has the physical ability to perform a modified position offered by the employing establishment is primarily a medical question that must be resolved by medical evidence. All impairments, whether work related or not, must be considered in assessing the suitability of an offered position.⁸

Section 8123(a) of FECA provides in pertinent part that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁹ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁰ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner (IME) for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and entitlement to a schedule award, effective April 26, 2020, for refusing an offer of suitable work pursuant to 5 U.S.C. § 8106(c)(2).

⁴ 5 U.S.C. § 8106(c)(2); *see also Geraldine Foster*, 54 ECAB 435 (2003).

⁵ *See R.A.*, Docket No. 19-0065 (issued May 14, 2019); *Ronald M. Jones*, 52 ECAB 190 (2000).

⁶ *S.D.*, Docket No. 18-1641 (issued April 12, 2019); *Joan F. Burke*, 54 ECAB 406 (2003).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4(c) (June 2013); *see Lorraine C. Hall*, 51 ECAB 477 (2000).

⁸ *L.L.*, Docket No. 17-1247 (issued April 12, 2018); *J.J.*, Docket No. 17-0410 (issued June 20, 2017); *Gayle Harris*, 52 ECAB 319 (2001).

⁹ 5 U.S.C. § 8123(a).

¹⁰ 20 C.F.R. § 10.321.

¹¹ *K.S.*, Docket No. 19-0082 (issued July 29, 2019).

OWCP properly found a conflict in the medical opinion evidence between Drs. Lee and Sanders and referred appellant to Dr. Williams for an impartial medical examination.¹²

In a January 31, 2019 report, Dr. Williams noted that appellant was obese and concomitant of significant deconditioned state unrelated to the May 23, 2008 work injury. She noted that the work-related injury was affected by the preexisting medical condition of obesity that placed excessive load on the cervical and lumbar spine causing additional symptomology. Based on the February 1, 2019 FCE, Dr. Williams opined that appellant was capable of performing sedentary work on a full-time basis, sitting up to eight hours per day. She determined that appellant was capable of walking and standing up to two hours per day; reaching above her shoulder up to two hours per day; pushing and pulling no more than 20 pounds up to two hours per day; lifting no more than 10 pounds up to two hours per day; and no twisting, bending or stooping. The Board finds that Dr. Williams' opinion is entitled to the special weight of the medical evidence accorded an IME because she based this opinion on a proper factual background, a review of the medical record, and physical examination, and she provided a well-rationalized opinion that appellant was capable of a sedentary level of modified-duty work.

On July 19, 2019 the employing establishment offered appellant a modified position of distribution window and markup clerk. The job description listed that duties would be performed up to eight hours a day and included assisting customers in the lobby that could be performed while sitting up to eight hours. The physical requirements included: lifting up to 10 pounds, pushing and pulling 20 pounds intermittently up to two hours each, walking, standing, and reaching above the shoulder intermittently up to two hours each, no twisting, bending, or stooping. The Board finds that the physical requirements of the offered position of distribution window and markup clerk conformed to appellant's work restrictions as provided by Dr. Williams. The special weight of the medical evidence of record establishes that appellant was no longer totally disabled from work and had the physical capacity to perform the duties listed in the July 19, 2019 job offer. Thus, OWCP properly relied on Dr. Williams' opinion in finding the distribution window and markup clerk position suitable.

In accordance with the procedural requirements under 5 U.S.C. § 8106(c), OWCP advised appellant on August 19, 2019 that it found the job offer of modified distribution window and markup clerk to be suitable and afforded her an opportunity to provide reasons for refusing the position within 30 days. Following appellant's reply, it advised her, in a December 20, 2019 letter, that her reasons for refusing were deficient and properly allowed 15 additional days to accept the offered position. The Board finds that OWCP followed the established procedures prior to the termination of her wage-loss compensation pursuant to 5 U.S.C. § 8106(c)(2).

Subsequent to the August 19, 2019 letter from OWCP, appellant submitted an October 8, 2019 report from Dr. McKay who diagnosed failed cervical and lumbar spine surgery, status post lumbar fusion and anterior cervical fusion, cervicgia, lumbago, chronic pain syndrome and morbid obesity. Dr. McKay noted that appellant was totally disabled. Similarly, on October 9, 2019 appellant was treated by Dr. Syed for low back and neck pain. He noted a problem list of chronic back pain, cervical herniation, lumbar herniation, lumbar and cervical post-laminectomy

¹² *Id.*

syndrome, sprain of the ligaments of the cervical spine, muscle fascia and tendon at the neck, ligaments of the thoracic spine, and muscle spasm of the back and advised that appellant was off work for three months. However, Drs. McKay and Syed's reports are insufficient to establish that the position offered appellant was unsuitable as the physicians did not provide a reasoned opinion explaining how or why appellant's diagnosed conditions prevented her from performing the modified job duties at the time her compensation was terminated.¹³

The Board, therefore, finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and entitlement to a schedule award based on her refusal to accept the offered position.

LEGAL PRECEDENT -- ISSUE 2

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹⁴ Section 8129(a) of FECA provides, in pertinent part: "When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled."¹⁵

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹⁶ Section 8116 of FECA defines the limitations on the right to receive compensation benefits. This section of FECA provides that, while an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States, except in limited circumstances.¹⁷ OWCP's regulations provide in pertinent part that compensation for wage loss due to disability is available only for any periods during which the employee's work-related medical condition prevents her from earning the wages earned before the work-related injury.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,193.12 for the period April 26 through May 23, 2020 because she continued to receive wage-loss compensation following the termination of her compensation payments.

¹³ *E.H.*, Docket No. 19-1352 (issued December 18, 2019); *E.C.*, Docket No. 17-1645 (issued June 11, 2018).

¹⁴ *Supra* note 1 at § 8102(a).

¹⁵ *Id.* at § 8129(a).

¹⁶ *Id.* at § 8102.

¹⁷ *Id.* at § 8116(a).

¹⁸ 20 C.F.R. § 10.500.

OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award, effective April 26, 2020, finding that she had refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c)(2). However, appellant continued to receive wage-loss compensation on the supplemental rolls through May 23, 2020. Since OWCP had terminated her wage-loss compensation benefits, effective April 26, 2020, appellant was not entitled to receive compensation benefits after that date. As she received \$3,193.12 in FECA wage-loss compensation for the period April 26 through May 23, 2020, the Board finds that an overpayment of compensation in that amount was created.

LEGAL PRECEDENT -- ISSUE 3

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁹

Recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.²⁰ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.²¹ Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.²² An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.²³

Recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that

¹⁹ 5 U.S.C. § 8129.

²⁰ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. 20 C.F.R. § 10.436. An individual is deemed to need substantially all of her monthly income to meet current and ordinary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400(2), (3) (September 2020).

²¹ *Id.* at Chapter 6.400.4(a)(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

²² *See id.* at Chapter 6.400.4(a)(2) (September 2020).

²³ *Id.* at Chapter 6.400.4(b)(3).

such payments would be made, gives up a valuable right or changes his or her position for the worse.²⁴

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.²⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.²⁶ It considered appellant's financial information, as reported in appellant's Form OWCP-20, to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

The Board finds that OWCP properly determined that appellant did not require substantially all of her income to meet ordinary and necessary living expenses. Based upon the information provided on the Form OWCP-20, and evidence received after the hearing, appellant reported income totaling \$1,963.00 and expenses of \$662.00 for a mortgage, \$600.00 for food, \$100.00 for clothing, \$76.00 for water, \$20.00 for natural gas, \$78.00 for telephone,²⁷ \$131.00 for electric, and \$132.00 for car insurance. Her expenses totaled \$1,799.00. Appellant noted a checking account balance of \$16.39, savings account balance of \$119.68, and TSP balance of \$68,251.01. As her monthly income exceeds her monthly expenses by \$164.00, appellant does not need substantially all of her monthly income to meet current and ordinary living expenses.

The Board further finds that appellant has not established that recovery of the overpayment would be against equity and good conscience because it has not been shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt, or that a valuable right had been relinquished, or that a position had been changed for the worse in reliance on the payment, which created the overpayment.²⁸ Therefore, OWCP properly denied waiver of recovery of the overpayment.

²⁴ 20 C.F.R. § 10.437(a)(b).

²⁵ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²⁶ 5 U.S.C. § 8129.

²⁷ One telephone line is permitted as an ordinary and necessary expense. *Supra* note 20 at Chapter 6.400(4)(b)(2)(a)) (September 2020).

²⁸ *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP has not abused its discretion by denying waiver of recovery of the overpayment.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and entitlement to a schedule award, effective April 26, 2020, for refusing an offer of suitable work pursuant to 5 U.S.C. § 8106(c)(2). The Board further finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,193.12, for which she was without fault, because she continued to receive wage-loss compensation following the termination of her compensation for the period April 26 through May 23, 2020. The Board also finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board